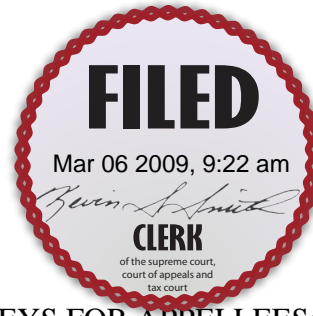


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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IN THE
COURT OF APPEALS OF INDIANA

MICHAEL CONNOR, LINDA O'MAHONEY, DONALD)
LAYELLE, JOHN T. MCKITRICK, JOHN WILSON,)
JUDY CURTIS, WILLIAM WOZNEY, BRIGID)
MCKITRICK, MARY JANE FERNANDEZ, KATHERINE)
BRENNAN, BETTY FLYNN, HOWARD A. MASON,)
SHARON STITCH, DAVID KAPLAW, SUELLEN)
KELLEY-BERGERSON, JEROME SLOMKA, JUDITH)
WOLFORD, MOLLIE MCKITRICK, JOHN P.)
CONNOLLY, KAREN V. RAFTER, JAMES KENSIK,)
KATHERINE A. KELLEY, RITA FINK, JERRY MUCH,)
THOMAS MARREN, JOSEPH WAICKUS, GEORGE)
HENDAY and TOM STROPKY, NAMED PLAINTIFFS,)
taxpayers and residents of LaPorte County, on behalf of)
themselves and others similarly situated, And)
MICHIGAN TOWNSHIP CITIZENS FOR FAIR TAXES,)
INC. (an Indiana Not For Profit Corporation),)

Appellants-Plaintiffs,)

vs.)

CAROL MCDANIEL, individually and as Assessor of)
LaPorte County, Indiana, NEXUS GROUP,)
INCORPORATED, FRANK S. KELLY and)
JEFFREY WUENSCH,)

Appellees-Defendants.)

No. 46A05-0804-CV-206

APPEAL FROM THE LAPORTE SUPERIOR COURT NO. 2
The Honorable Steven King, Judge
Cause No. 46D02-0709-PL-129

March 6, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

RILEY, Judge

STATEMENT OF THE CASE

Appellants-Plaintiffs, Michael Connor (Connor), *et al.* (collectively, Appellants), appeal the trial court's grant of summary judgment to Appellees-Defendants, Carol McDaniel (McDaniel), individually and as Assessor of LaPorte County, Indiana, Nexus Group, Inc. (Nexus), Frank S. Kelly (Kelly), and Jeffrey S. Wuensch (Wuensch), named corporate officers of Nexus (collectively, Appellees).

We affirm.

ISSUES

Appellants raise four issues, two of which we need to address:

- (1) Whether the trial court erred when it determined that it lacked subject matter jurisdiction and that Appellants had failed to exhaust administrative remedies;
and
- (2) Whether the trial court erred when it determined that Appellants' claims were barred by laches.

FACTS AND PROCEDURAL HISTORY

On June 24, 2004, the County Commissioners of LaPorte County (the Commissioners) entered into a contract with Nexus “on behalf of County Assessor of LaPorte County.” (Appellants’ App. p. 22).¹ Nexus was to perform services aiding in the development of fair market property valuations for the purpose of reassessments. No competing bids for the contract were solicited prior to the Commissioners entering into the contract.

At a deposition on August 20, 2007, Appellants, a group of disgruntled taxpayers, learned about the no-bid contract when deposing McDaniel for another matter. On September 13, 2007, Appellants filed their Complaint. The Complaint contained three counts: “Count One – Request for Declaratory Judgment”; “Count Two – Official Misconduct”; and “Count Three – Conspiracy.” (Appellants’ App. pp. 16, 18, 19). Related to their claim for declaratory judgment, Appellants asked that the contract between Nexus and LaPorte County be declared void, that Nexus be ordered to return any money it had been paid, and that all of Nexus’ services performed pursuant to the contract be deemed null and void. For Counts Two and Three, Appellants asked that McDaniel be ordered to repay to the treasury of LaPorte County, Indiana, all sums paid to Nexus. Additionally, Appellants moved for a class action certification.

On November 13, 2007, McDaniel filed a motion to dismiss contending: (1) Appellants were required to, but failed to, file a notice of tort claim; (2) the trial court lacked

¹ We remind Appellants that the table of contents for each appendix filed with this court shall identify each item by date. Ind. Appellate Rule 50(C).

subject matter jurisdiction because the Indiana Tax Court has jurisdiction over reassessment issues, and the services thereto; (3) if the trial court were to determine that the contract was subject to competitive bid standards, Appellants had failed to exhaust remedies available under public lawsuit provisions; (4) the lawsuit was barred by laches; and (5) any alleged error by failing to solicit bids was made in good faith reliance upon an official opinion by the Indiana Attorney General. McDaniel attached Indiana Attorney General Official Opinion No. 26, December 23, 1976, to her motion to dismiss. On November 14, 2007, Nexus, Kelly, and Wuensch filed a motion to dismiss arguing: (1) competitive bidding was not required by Indiana Code section 6-1.1-4-18.5 because LaPorte County contracted with Nexus to aid in the performance of reassessments, not assessments; (2) the contract was not a public contract and therefore not subject to formal bidding procedures; (3) Appellants failed to exhaust administrative remedies; (4) Appellants did not have standing to request the relief they sought; (5) the trial court lacked subject matter jurisdiction; (6) the Appellants had not been injured; (7) the lawsuit was barred by laches; (8) the lawsuit was barred by estoppel; (9) Nexus had a lack of knowledge as required by conspiracy; and (10) Kelly and Wuensch were personally protected by the corporate veil.

On December 12, 2007, the Appellants filed separate responses to the motions to dismiss. Attached to the responses was the transcript of a deposition of McDaniel; the printout of an e-mail sent by the Appellants' attorney to the attorney for LaPorte County; a memorandum from the Department of Local Government Finance regarding contracts for professional appraisal services; the Transcript of Proceedings from another lawsuit against

McDaniel in her capacity as LaPorte County Assessor; the transcript of a deposition of Terry Beckinger; and various other documents. On December 24, 2007, McDaniel filed her reply, attaching an affidavit from Robert C. Szilagyi, an attorney for LaPorte County. On January 17, 2008, the trial court held a hearing.

On March 7, 2008, the trial court entered its judgment. The trial court ruled that because extraneous materials had been attached to the pleadings, the motions to dismiss should be treated as motions for summary judgment. The trial court concluded that: (1) if it granted Appellants' request for a declaration that the services provided by Nexus are null and void, such a grant would circumvent the Appellants' obligation to exhaust administrative remedies and be beyond the subject matter jurisdiction held by the trial court; (2) the request was barred by the doctrine of laches because it would result in extreme prejudice to the LaPorte County government and taxpayers, and Nexus; (3) Kelly and Wuensch were personally entitled to judgment as a matter of law because they had signed the contract in their representative capacity as officers of Nexus; (4) McDaniel was entitled to judgment as a matter of law because she had not signed the contract, but merely recommended Nexus to the Commissioners, an action for which she was entitled to statutory immunity; and (5) no civil cause of action existed for either Appellants' claim that McDaniel engaged in official misconduct or their claim for conspiracy. For all of these reasons the trial court granted summary judgment to Appellees on all claims.

Appellants now appeal. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

I. Standard of Review

First, we note that the trial court treated the motions to dismiss as motions for summary judgment because all parties attached documents and evidence to the respective motions, responses, and replies. Ind. Trial Rule 12(B) provides that a motion to dismiss for failure to state a claim upon which relief can be granted shall be treated as a motion for summary judgment when matters outside the pleadings are presented to and not excluded by the trial court. *Ace Foster Care and Pediatric Home Nursing Agency Corp. v. Indiana FSSA, Div. of Family and Children, Lake County*, 865 N.E.2d 677, 681-82 (Ind. Ct. App. 2007). Appellants do not appeal such treatment.

The purpose of summary judgment is to terminate litigation where there is no factual dispute and which may be determined as a matter of law. Ind. Trial Rule 56(C); *Fowler v. Brewer*, 773 N.E.2d 858, 861 (Ind. Ct. App. 2002), *trans. denied*. The moving party must make a *prima facie* showing that there are no genuine issues of material fact. *Id.* If the moving party meets this burden, the responding party must set forth specific facts showing the existence of a genuine issue for trial. T.R. 56(E); *Fowler*, 773 N.E.2d at 861. Summary judgment will be affirmed on appeal if it is sustainable on any theory or basis found in the evidence designated to the trial court. *Fowler*, 773 N.E.2d at 861. Where, as here, a trial court has made specific findings and conclusions thereon when ruling on a motion for summary judgment, we are not bound by those findings and conclusions, but they aid our review by providing us with a statement of the reasons for the trial court's actions. *Hickman*

v. State, 895 N.E.2d 353, 356 (Ind. Ct. App. 2008), *clarified on reh'g*. When reviewing the grant or denial of summary judgment, our standard of review is *de novo*. *Univ. of S. Indiana Found. v. Baker*, 843 N.E.2d 528, 531 (Ind. 2006).

II. Subject Matter Jurisdiction

The first rational relied upon by the trial court to grant summary judgment to Appellees was that by requesting the trial court to deem the services provided by Nexus null and void, the Appellants were seeking to circumvent obligations to exhaust administrative remedies and “cause the trial court to act in an area where it lacks subject matter jurisdiction.” (Appellants’ App. p. 486). The parties do not on appeal, nor did the trial court below, give any detailed explanation as to what administrative remedies are being referred to, or where subject matter jurisdiction properly lies, if not with the trial court.

Subject matter jurisdiction is the power of the court to hear and decide a particular class of cases. *State Bd. Of Tax Comm’rs v. Ispat Inland, Inc.*, 784 N.E.2d 477, 480-81 (Ind. 2003). A trial court must possess subject matter jurisdiction in order to enter a valid judgment in a case. *City of Marion v. Howard*, 832 N.E.2d 528, 531 (Ind. Ct. App. 2005), *trans. denied, cert. denied*. The absence of subject matter jurisdiction cannot be waived, and it renders a judgment void. *Id.*

Wayne Twp. v. Indiana Dept. of Local Gov’t Finance, 865 N.E.2d 625, 627 (Ind. Ct. App. 2007), *reaffirmed on reh'g*, 869 N.E.2d 531 (Ind. Ct. App. 2007), *trans. denied*.

Although not specifically stated in the trial court’s order, we assume that the trial court concluded that jurisdiction was properly before the Indiana Tax Court due to the fact that, if the trial court granted the relief requested, reassessments of property for purposes of determining tax liability would be negated. For purposes of determining whether the Indiana

Tax Court has exclusive jurisdiction, a case ‘arises under’ the tax laws if: (1) an Indiana tax statute creates the right of action or; (2) the case principally involves collection of a tax or defenses to that collection. *Wayne Twp.*, 865 N.E.2d at 628. The statute relied upon by Appellants for their argument that bidding was required prior to LaPorte County’s act of contracting with Nexus is Indiana Code section 6-1.1-4-18.5. This statute falls squarely within the section of the Indiana Code pertaining to tax issues. However, since the substance of the Appellants’ Complaint is that the contract was entered into illegally, this case does not principally involve the collection of a tax or defenses to that collection.

Moreover, “[t]he issue of subject matter jurisdiction is resolved by determining whether the *claim* involved falls within the general scope of authority conferred on the court by the Indiana Constitution or by statute.” *Edwards v. Neace*, 898 N.E.2d 343, 345 (Ind. Ct. App. 2008) (emphasis added). To the contrary, the trial court explicitly looked to the remedy requested to determine that it did not have subject matter jurisdiction.

The trial court was LaPorte County Superior Court No. 2, which has the same jurisdiction as the LaPorte Circuit Court. I.C. §§ 33-33-46-2 and 7. It is a court of general jurisdiction in civil matters. *See State v. Monfort*, 723 N.E.2d 407, 414 (Ind. 2000); *see also Community Hospitals of Indiana, Inc., v. Estate of North*, 661 N.E.2d 1235, 1239 (Ind. Ct. App. 1996) *trans. denied*. As we have already stated, the substance of the claims presented by Appellants in their Complaint was that the contract with Nexus violated Indiana law. Therefore, the trial court, a court with general jurisdiction over civil matters, had subject matter jurisdiction.

III. *Laches*

Appellants argue that the trial court erred when it determined that their claims were barred by laches. Specifically, they contend that the equitable defense of laches is unavailable to the Appellees because they had “unclean hands.” (Appellants’ Br. p. 12).

Laches is an equitable defense which contains three elements: “(1) inexcusable delay in asserting a known right; (2) an implied waiver arising from knowing acquiescence in existing conditions; and (3) a change in circumstances causing prejudice to the adverse party.” *Gleeson v. Preferred Sourcing, LLC*, 883 N.E.2d 164, 180 (Ind. Ct. App. 2008). “The issue of laches is viewed as a question of fact to be resolved by the trial court in the exercise of its sound discretion from the facts and circumstances of each case.” *Shafer v. Lambie*, 667 N.E.2d 226, 231 (Ind. Ct. App. 1996) (citing *Ball v. Ind. Dep’t of Revenue*, 563 N.E.2d 522, 525 (Ind. 1990)). The decision of the trial court will not be disturbed on appeal absent an abuse of discretion. *Id.*

One of the rules of equity is that those who come into equity must come with clean hands. *Prime Mortgage USA, Inc. v. Nichols*, 885 N.E.2d 628, 665 (Ind. Ct. App. 2008).

For the doctrine of unclean hands to apply, the misconduct must be intentional and the alleged wrong must have an immediate and necessary relation to the matter being litigated. The purpose of the unclean hands doctrine is to prevent a party from reaping the benefits from misconduct. The doctrine of unclean hands is not favored and must be applied with reluctance and scrutiny.

Id. (citations and punctuation omitted).

In making their argument, Appellants explain: “The trial court erred in relying on the [Appellees’] equitable defense, considering it was their actions in failing to publish notice

and solicit bids that allowed the contract to go undetected by the taxpayers of LaPorte County.” (Appellants’ Br. p. 13). However, it is undisputed that McDaniels did not enter into the contract with Nexus; she merely recommended Nexus to the Commissioners who then entered into the contract with Nexus. But, Appellants have not brought suit against the Commissioners. Moreover, Nexus held no obligation to ensure that LaPorte County solicited bids from their potential competitors.

Furthermore, the trial court exercised its discretion when it determined that Appellants had slumbered on their rights for three years while LaPorte County diligently worked to develop assessments. Much of that work had been accomplished by the time Appellants brought suit. Altogether, we conclude that Appellees did not come to equity with unclean hands, and the trial court did not err when determining that laches barred Appellants’ claims.²

CONCLUSION

Based on the foregoing, we conclude that the trial court did not err when it granted summary judgment to Appellees.

Affirmed.

DARDEN, J., and VAIDIK, J., concur.

² Because we conclude that the trial court had subject matter jurisdiction and did not err when determining that Appellants’ claims were barred by laches, we need not address their contentions that the contract was void *ab initio* or that Kelly and Wuensch were individually liable by way of conspiracy.